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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE FRANCISCO DIAZ PONCE;
CELIA DIAZ PEREZ,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-71634

Agency Nos. A079-519-580
A079-519-581

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 14, 2009^{**}

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Jose Francisco Diaz Ponce and Celia Diaz Perez, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen based on ineffective

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and de novo claims of due process violations based on ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen because petitioners presented insufficient evidence to establish prejudice. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (to prevail on an ineffective assistance of counsel claim a petitioner must demonstrate prejudice).

In light of our disposition, we do not reach petitioners' remaining contentions.

PETITION FOR REVIEW DENIED.